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GOVERNMENT OF MYSORE.

Legislative Department.

NOTIFICATION.

No L D. 2301—Legis. 3-51-41, dated Bangalore, 8th March 1952.

Ordered that the Report of the Select Committee on the Indian Standards Institution (Certification Marks) Bill, 1952 (Central Bill No. 2 of 1951), published in the *Gazette of India*, Part II, Section 2, dated the 23rd February 1952, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

The following Report of the Select Committee on the Bill to provide for the standardisation and marking of goods, was presented to Parliament on the 15th February 1952:—

We, the undersigned, members of the Select Committee to which the Bill to provide for the standardisation and marking of goods was referred, have considered the Bill, and have now the honour to submit this our report, with the Bill as amended by us annexed thereto,

Upon the changes proposed by us, which are not formal or consequential, we note as follows:—

Clause 2.—We think that the definition of "mark" should include "pictorial representation" also and we have accordingly amended clause 2(g).

Apart from the regulations which the Institution may make, we think that the rule-making power should be vested in the Central Government, Clause 2(h) has accordingly been amended.

It may not generally be possible to mark any process with the Standard Mark and we have omitted the words "or process" in clause 2(n).

Clause 3.—We consider that it is not necessary to vest the Institution with powers of search and seizure. We have accordingly omitted the existing part (f) and inserted a new part. We have also made slight drafting changes in parts (b) and (e).

We are of opinion that for the proper development of the export market of India, it is necessary to standardise articles of export and we recommend that such articles should, as far as practicable, be standardised.

Clause 4.—The existing clause provided for the constitution of the Certification Marks Division Council. We do not consider it necessary to provide for such constitution in the Bill.

The setting up of an effective machinery to deal with the question of marking of goods with Standard Mark may be left to the Institution and the rule-making power of the Central Government. We have therefore omitted the existing clause 4 and inserted a new clause to provide for the authentication of orders and instruments issued by the Institution.

Clause 6.—The word "Standard" is a common expression found in the names of many firms and companies and we do not consider it proper to prohibit the use of this expression. We have accordingly amended sub-clause (1) and omitted sub-clause (2) as being unnecessary.

Clause 8.—We have made slight drafting changes in sub-clause (1).

In part (b) of sub-clause (2), we have provided that Inspectors may also take samples of any articles and have made slight drafting changes in this part.

Parts (*c*) to (*g*) of sub-clause (2), vested the Inspectors with what may be called "police powers". They were vested with powers of entry, search and seizure and also with powers to examine any person. We consider that it is not necessary to vest the Inspector with such powers. We have accordingly omitted parts (*c*) to (*g*) of this sub-clause.

We have omitted sub-clause (3) as being unnecessary.

In order that inspection may be effectively done, we recommend that experts with technical qualifications should be appointed as Inspectors in suitable cases.

Clause 9.—We think that the Institution should not demand returns and reports from licensees. All that it may require is certain information. We have re-drafted the clause accordingly.

Clause 10.—We are of opinion that power of delegation should not be vested in the Institution. Such power should be vested in the Central Government. We have accordingly amended clause 10.

Clause 11.—Under the existing provisions of the Bill, appeal lay in certain cases to the Institution and in other cases, to the Central Government. We think that in all cases, appeal should lie directly to the Central Government. We have re-drafted the clause accordingly.

Clause 12.—The changes made in this clause are merely consequential.

Clause 13.—We have omitted sub-clause (1) as being unnecessary and made consequential changes in sub-clauses (2) and (3).

We also think that the maximum amount of fine leviable should be increased from five thousand rupees to ten thousand rupees.

Clause 15.—We think that the Government should also be empowered along with the Institution to launch prosecutions. We have amended the clause accordingly.

Clause 17.—We have re-drafted this clause to make the intention clear.

New Clause 19.—The Indian Standards Institution was set up under a Resolution of the Government of India and its constitution is regulated under the Societies Registration Act, 1860. We are of opinion that the Central Government should have powers to amend, if necessary, the constitution and composition of the Institution. We have accordingly inserted this new clause to provide that the Central Government may, if satisfied that public interest so requires, issue general instructions to the Institution and such instructions may include directions to make or amend any bye-law relating to the composition of the Governing Body or other committees of the Institution and its powers and functions. The Institution should not depart from any general instructions issued by the Central Government.

New Clause 20 (*original clause 19*).—We are of opinion that the rule-making power should lie with the Central Government. We have accordingly amended this clause and have also made certain consequential changes.

New clause 21 (*original clause 20*).—While the rule-making power in all important matters should lie with the Central Government, we consider that the Institution should be vested with powers to make regulations in respect of matters of details for carrying out the day to day administration. We have accordingly inserted this new clause.

2. The Bill was published in the *Gazette of India* Extraordinary, Part II, section 2, dated 3rd February, 1951.

3. We think that the Bill has not been so altered as to require circulation under Rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

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J. N. HAZARIKA
*P. K. LAKSHMANAN
RADHELAL VYAS
B. P. JHUNJHUNWALA
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SYAMNANDAN SAHAYA
TEK CHAND
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MAHESWAR NAIK
*ARUN CHANDRA GUHA

NEW DELHI,

The 15th February, 1952.

MINUTES OF DISSENT

I

The idea underlying the marking of an article with the Indian Standard Mark as is stated in the statement of Objects and Reasons appended to the Bill is to convey an assurance to the purchaser that the goods or services so marked have been inspected, tested and certified by some agency of competence and that they may be purchased with more than ordinary assurance that certain standards of quality have been met. This imposes a heavy responsibility on the Indian Standards Institution to see that no spurious article bearing the certification mark get into the market. This responsibility cannot adequately be discharged unless the Institution is vested with powers of search and seizure as is sought to be done under part (f) of clause 3 and parts (*c*) to (*g*) of clause 8. I am firmly of the opinion that the deletion of these powers will have the effect of defeating the very purpose of the measure. Subject to these observations I agree with the report.

P. K. LAKSHMANAN.

NEW DELHI,

The 15th February, 1952.

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* Subject to a Minute of Dissent.

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II

The language used in clause 10 of the Bill seems to me vague and ambiguous. I think it has not been the intention of the Select Committee to restrict the selection of competent authority only to persons or organisations belonging to or connected with any industry. At least my purpose was to make the scope much wider so as to include independent experts such as professors, engineers, technicians and independent scientific academicians and institutions. I hope the language would be made clear on this point.

ARUN CHANDRA GUHA.

NEW DELHI,

The 15th February, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(*Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate the omissions.*)

BILL NO. 2 OF 1951.

A Bill to provide for the standardisation and marking of goods.

BE it enacted by Parliament as follows:—

1. Short title and extent.—(*1*) This Act may be called the Indian Standards Institution (Certification Marks) Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "article" means (as respects standardisation and marking) any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured;

(*b*) "covering" includes any stopper, cask, bottle, vessel, box, crate, cover, capsule, case, frame, wrapper or other container;

(*c*) "Indian Standard" means the standard (including any tentative or provisional standard) established and published by the Indian Standards Institution, in relation to any article or process, indicative of the quality and specification of such article or process;

(*d*) "Inspector" means an Inspector appointed under section 8;

(*e*) "Institution" means the Indian Standards Institution set up under the Resolution of the Government of India in the late Department of Industries and Supplies No. 1 Std. (4)/45, dated the 3rd day of September, 1946, and registered under the Societies Registration Act, 1860 (XXI of 1860);

(*f*) "licence" means a licence granted under this Act to use the Indian Standards Institution Certification Mark, in relation to any article or process which conforms to the Indian Standard;

(*g*) "mark" includes a device, brand, heading, label, ticket, pictorial representation, name, signature, word, letter or numeral or any combination thereof;

(*h*) "prescribed" means prescribed by rules or regulations made under this Act;

(*i*) "process" includes any practice, treatment and mode of manufacture of any article;

(*j*) "registering authority" means any authority competent under any law for the time being in force to register any company, firm or other body of persons, or any trade mark or design, or to grant a patent;

(*k*) "specification" means a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture, or other characteristics to distinguish it from any other article or process;

(*l*) "Standard Mark" means the Indian Standards Institution Certification Mark specified by the Indian Standards Institution to represent a particular Indian Standard;

(*m*) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark, whether with or without any indication of the identity of that person;

(*n*) an article * * is said to be marked with a Standard Mark if the article * * itself is marked with a Standard Mark or any covering containing, or label attached to, such article is so marked.

3. Powers and duties of the Institution.—The Institution may exercise such powers and perform such duties as may be assigned to it by or under this Act, and, in particular, such powers include power to—

(*a*) establish and publish, in such manner as may be prescribed, the Indian Standard in relation to any article or process;

(*b*) specify a Standard Mark to be called the Indian Standards Institution Certification Mark, which shall be of such design and contain such particulars as may be prescribed to represent a particular Indian Standard;

(*c*) grant, renew, suspend or cancel, in such manner as may be prescribed, a licence for the use of the Standard Mark;

(*d*) levy such fees for the grant or renewal of any licence as may be prescribed;

(*e*) make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without licence;

(*f*) do such other acts as may be prescribed.

4. Authentication of orders and other instruments of the Institution.—All orders and decisions of, and all other instruments issued by the Institution shall be authenticated by the signature of such officer or officers as may be authorised by the Institution in this behalf.

5. Prohibition of improper use of Standard Mark.—(1) No person shall use in relation to any article or process, or in the title of any patent, or in any trade mark or design the Standard Mark or any colourable imitation thereof, except under a licence granted under this Act.

(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Indian Standard.

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6. Prohibition of use of certain names, etc.—* * * No person shall except in such cases and under such conditions as may be prescribed use without the previous permission of the Institution,—

(*a*) any name which so nearly resembles the name of the Indian Standards Institution as to deceive or likely to deceive the public or which contains the expression x x "Indian Standard" or any x x abbreviation thereof; or

(*b*) any mark or trade mark in relation to any article or process containing the expressions * * "Indian Standard" or "Indian Standard specification" or any * * abbreviation of such expressions.

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7. Prohibition of registration in certain cases.—(1) Notwithstanding anything contained in any law for the time being in force, no registering authority shall——

(*a*) register any company, firm or other body of persons which bears any name, or

(*b*) register a trade mark or design which bears any name or mark, or

(*c*) grant a patent, in respect of an invention, which bears a title containing any name or mark,

if the use of such name or mark is in contravention of section 5 or section 6.

(2) If any question arises before a registering authority whether the use of any name or mark is in contravention of section 5 or section 6, the registering authority may refer the question to the Central Government whose decision thereon shall be final.

8. Inspectors.—(1) The Institution may appoint as many Inspectors as may be necessary for the purpose of inspecting whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without licence, and for the purpose of performing such other functions as may be assigned to them.

(2) Subject to any rules made under this Act, an Inspector shall have power to—

(a) inspect any operation carried on in connection with any article or process in relation to which the Standard Mark has been used;

(*b*) take samples of any article, or of any material or substance used in any article or process, in relation to which the Standard Mark has been used;

* * * * * *

(*c*) exercise such other powers as may be prescribed.

(3) Every Inspector shall be furnished by the Institution with a certificate of appointment as an Inspector, and the certificate shall, on demand, be produced by the Inspector.

9. Power to obtain information, etc.—Every licensee shall supply the Institution with such information, and with such samples of any material or substance used in relation to any article or process, as the Institution may require.

10. Power to authorise the competent authority.—(1) The Central Government may, in consultation with the Institution, by notification in the Official Gazette, direct that any power exercisable by the Institution by or under this Act shall, in relation to such matters and subject to such conditions as may be specified in the

direction, be exercisable also by such authority or such organisation of any industry as may be specified in the notification (hereinafter referred to as the 'competent authority').

(2) For avoidance of doubts, it is hereby declared that the Central Government may, by a like notification, withdraw the powers delegated to a competent authority under sub-section (1).

11. Appeals.—(1) Any person aggrieved by an order passed under clause (*e*) of section 3, whether by the Institution or by a competant authority, may prefer an appeal to the Central Government.

(2) The appeal shall be presented in such form and manner and within such time as may be prescribed.

(3) The Central Government shall, in dealing with appeals under this section, follow such procedure as may be prescribed.

12. Certain matters to be kept confidential.—Any information obtained by an Inspector, competent authority, or the Institution from any statement made or information supplied or in any evidence given or from inspection made under the provisions of this Act shall be treated as confidential :

Provided that nothing in this section shall apply to the disclosure of any information for the purpose of prosecution under this Act.

13. Penalty for improper use of Standard Marks, etc.—(1) Any person * * * who contravenes the provisions of section 5 or section 6 shall be punishable with fine which may extend to ten thousand rupees.

(2) Any court trying a contravention under sub-section (1) * * * may direct that any property in respect of which the contravention has taken place shall be forfeited to the Government.

14. Penalty for o her offences.—Whoever contravenes any of the provisions of this Act or of any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one thousand rupees.

15. Cognizance of offences by courts.—(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the Government or the Institution or by an officer empowered in this behalf by the Government or the Institution.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class specially empowered in this behalf shall try any offence punishable under this Act.

16. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the Institution or any person acting under the authority of the Central Government or the Institution for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder.

17. Act not to affect the operation of certain Acts.—Nothing in this Act shall affect the operation of the Agricultural Produce (Grading and Marking) Act, 1937 (I of 1937) or the Drugs Act, 1940 (XXIII of 1940).

18. Savings.—Nothing in this Act shall exempt any person from any suit or other proceeding which might, apart from this Act, be brought against him.

19. Directions by the Central Government.—(*1*) The Central Government may, if satisfied that the public interest so requires, by order in writing for reasons to be stated therein, give to the Institution general instructions to be followed by the

Institution and such instructions may, notwithstanding anything contained in the Societies Registration Act, 1860 (XXI of 1860), include directions to make or amend any bye-law relating to the composition of the Governing Body or other Committees of the Institution and its powers and functions in such form and within such period as may be specified in the order.

(2) In the exercise of its powers and performance of its duties, the Institution shall not depart from any general instructions issued under sub-section (1).

Explanation.—In this section, the expression "bye-law" includes all rules, or regulations (by whatever name called) which the Institution is competent to make in the exercise of the powers conferred on it under the Societies Registration Act, 1860.

20. Power to make rules.—(1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the procedure and manner in which the Indian Standard, in relation to any article or process, may be established and published ;

(*b*) the design of the Standard Mark in relation to each Indian Standard and the particulars which a Standard Mark may contain ;

(*c*) authorisation of competent authority under section 10 ;

(*d*) the manner in which, and the conditions subject to which, a licence to use the Standard Mark may be granted, renewed, suspended or cancelled ;

(e) the levy of fees for the grant or renewal of any licence ;

(*f*) the mode of inspection by the Institution and the manner in which samples may be taken by it ;

* * * * *

(*g*) the * * powers and functions of the Institution ;

(*h*) the cases in which, and the circumstances under which, exemption may be granted from the prohibition contained in section 6 ;

(*i*) the powers of Inspectors ;

(*j*) the form and manner in which and the time within which appeals may be preferred ; the procedure to be followed in hearing appeals ;

(*k*) the forms to be used under this Act ;

(l) any other matter which has to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

21. Power to make regulations.—(1) The Institution may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the matters specified in clauses (*a*), (*b*) and (*f*) of sub-section (2) of section 20.

M. N. KAUL,
Secretary.